

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHRISTOPHER BLUE and ELIESTHEL COLON,

Index No.: 10 cv 07253

Plaintiffs,

-against-

ANSWER

MARK SCHRODER and BRUCE BERTRAND,

Defendants.
-----X

The defendant, MARK SCHRODER, by and through his attorneys, GAMBESKI & FRUM, hereby answer the complaint as follows:

AS AND TO JURISDICTION AND VENUE

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "1," "2," "3," "4" and "7" of the complaint.
2. Denies the allegations contained in paragraphs numbered "5" and "6" of the complaint.

AS AND TO THE COMMON FACTS

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "8" of the complaint.
4. Denies the allegations contained in paragraphs numbered "9" and "10" of the complaint.

AS AND TO THE FIRST COUNT
(CHRISTOPHER BLUE v. MARK SCHRODER):

5. The Defendant, MARK SCHRODER, answering paragraph numbered "1-10" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "10" inclusive as if set forth at length herein.
6. Denies the allegations contained in paragraphs numbered "11," "12a through 12u," "13," "14," "15," "16," of the complaint.
7. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "17" of the complaint.

AS AND TO THE SECOND COUNT
(ELIESTHEL COLON v. MARK SCHRODER)

8. The Defendant, MARK SCHRODER, answering paragraph numbered "1-13" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "13" inclusive as if set forth at length herein.

9. Denies the allegations contained in paragraphs numbered "14," "15" and "16" of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "17" of the complaint.

AS AND TO THE THIRD COUNT
(CHRISTOPHER BLUE v. BRUCE BERTRAND)

11. The Defendant, MARK SCHRODER , answering paragraph numbered "1-10" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "1-10" inclusive as if set forth at length herein.

12. Denies the allegations contained in paragraphs numbered "11" of the complaint.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "12a through 12m" "13" of the complaint.

14. The Defendant, MARK SCHRODER, answering paragraphs numbered "14-17 " from the First Count and paragraphs numbered "14-17" for the Third Count repeats and reiterates the answer to each and every allegation contained in paragraphs "14" through "17" inclusive as if set forth at length herein.

AS AND TO THE FOURTH COUNT
(ELIESTHEL COLON v. BRUCE BERTRAND)

15. The Defendant, MARK SCHRODER, answering paragraph numbered "1-13" repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "13" of the Fourth Count inclusive as if set forth at length herein.

16. The Defendant, MARK SCHRODER, answering paragraph numbered "14-17" from the Second County repeats and reiterates the answer to each and every allegation contained in paragraphs "14" through "17" for the Fourth Count inclusive as if set forth at length herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

17. That the allegations set forth in the compliant fail to state a cause of action against the answering Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

18. The Plaintiff has not sustained a serious injury as defined and set forth in Article 51 of the Insurance Law of the State of New York and, therefore, plaintiff is not qualified to maintain this lawsuit.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

19. Pursuant to CPLR 4545 (c), any award to the Plaintiff(s) for economic loss shall be reduced by the amount of economic recovery received from collateral sources.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

20. The accident or occurrence complained of was caused in whole or in part by the culpable conduct attributed to the Plaintiff(s) including contributory negligence and/or assumption of the risk and that by reason thereof the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion of which the culpable conduct attributed to the Plaintiff(s) bears to the alleged conduct of the defendant which allegedly caused the damages.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

21. That the motor vehicle in which plaintiff was riding was equipped with seatbelts in operable condition, which plaintiff failed to properly utilize, which would have prevented or reduced the extent of the injuries sustained. That the alleged injuries of the plaintiff were sustained totally or in part or were aggravated or extended as a result of failing to properly utilize the seat belts.

**AS AND FOR A CROSS CLAIM AS AND AGAINST
THE CO-DEFENDANT, BRUCE BERTRAND,
THE DEFENDANT, MARK SCHRODER
ALLEGES THE FOLLOWING:**

22. As and for a Cross-Claim against the co-defendant, BRUCE BERTRAND, the answering defendant respectfully alleges as follows:

23. That if the plaintiffs were caused to sustain damages at the time and place set for in the plaintiffs' complaint through any carelessness, and recklessness, and/or negligence other than the plaintiffs' own negligence, carelessness and recklessness, said damages were sustained by reason of the primary carelessness, recklessness and negligence and/or affirmative acts of mission and commission, by the Co-Defendant, BRUCE BERTRAND, individually or their agents, servants and/or employees, with the negligence, if any, on the part of the answering defendant being secondary and/or derivative only.

24. That by reason of the foregoing, the aforementioned co-defendant, BRUCE BERTRAND, will be liable to the answering defendant in the event and in the amount of recovery herein by the plaintiff or in such amount as the Court or Jury may direct.

WHEREFORE, the defendant, MARK SCHRODER, demands judgment dismissing the complaint of the plaintiff herein, and judgment on the cross-claim, together with costs and disbursement of this action and for such other and further relief as to this Court may seem just and proper.

Dated: Elmsford, NY
October 25, 2010

Yours, etc.,
GAMBESKI & FRUM

By: 

Malcolm Stewart (MS-1112)

Attorneys for Defendant

MARK SCHRODER

565 Taxter Road - Suite 150

Elmsford, NY 10523

914-347-5522

Our File No.: N-05317

To: TIMLEY, NASIRI, RENEHAN & DOST, LLP

Attorneys for Plaintiffs

60 North Main Street, 2nd Floor

Waterbury, CT 06702

203-596-9030

BRUCE BERTRAND

Defendant

1614 Highland Avenue

Waterbury, CT 06708